

JERRAD MALLORY,)
)
Movant,)
)
v.) No. 4:12CV1581 RWS
)
UNITED STATES OF AMERICA,)
)
Respondent.)

This matter is before the Court upon its own motion. Movant submitted a “motion for a reduction of sentence pursuant to 18 U.S.C. § 3582(b)(3) and 18 U.S.C. § 3742(a)(2).” In the motion, movant seeks to attack the validity of his sentence as imposed. The motion was filed in the criminal action. After reviewing the motion, however, the Court concluded that the motion would be more properly filed as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, and therefore, the Court ordered the Clerk to open the motion as a new case.

On September 5, 2012, the Court directed movant to inform the Court if he consented to the characterization of his motion as a motion to vacate under § 2255. See Morales v. United States, 304 F.3d 764, 767 (8th Cir. 2002) (Before the Court may *sua sponte* characterize the instant filing as a § 2255 motion, movant must be given the opportunity to either consent to the classification or withdraw the filing.).

Movant was informed that if he failed to give his timely consent, the action would be dismissed without prejudice.


Movant has failed to consent to the characterization within the prescribed time period. As a result, the Court will dismiss this action without further proceedings.

Accordingly,

IT IS HEREBY ORDERED that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed with this Memorandum and Order.

Dated this 12th day of October, 2012.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE